

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNIE PHILLIPS,)	
)	2:02-cv-1296-GEB-JFM-P
Plaintiff,)	
)	SUPPLEMENT TO PRETRIAL ORDER
v.)	
)	
CHERYL PLILER, et al.,)	
)	
Defendants.)	
_____)	

At the trial confirmation hearing held in this action on January 13, 2006, the following rulings issued which supplement the Pretrial Order filed August 26, 2005:

1. The jury trial in this action will commence at 9:00 a.m. on April 11, 2006. Trial will adjourn for the evening around 4:30 p.m. Trial is anticipated to last 2-3 days.

2. The sole issue preserved for trial is set forth in plaintiff's complaint, as follows: whether Defendant Ted Sanchez "unexpectedly approached plaintiff from behind and maliciously clawed into the flesh of plaintiff's left inner back arm area while

1 simultaneously causing plaintiff to trip over and onto the pavement,
2 being cuffed, only having his naked knee to break his fall," (Complaint
3 at 8), and, if so, whether this constituted excessive force in
4 violation of the Eighth Amendment. Not later than ten days before the
5 date set for trial the parties may submit an agreed statement of
6 plaintiff's claim or respective proposals for a statement of the claim
7 to be read to the jury.

8 3. The parties agreed that Defendant acted under color of
9 state law and that this element is eliminated as a trial issue.

10 4. The trial will be conducted in two phases: liability
11 and punitive damages. If the jury finds punitive damages are
12 recoverable in the liability phase, trial on the amount of punitive
13 damages will immediately occur. During the first phase of the trial,
14 the jury will be given a liability instruction on punitive damages
15 along with the other closing instructions and a verdict form which
16 will include the question whether punitive damages should be awarded.
17 If the answer is yes, the second phase of the trial would then occur
18 with the presentation of financial condition evidence pertinent to the
19 amount of punitive damages, following which the parties would present
20 closing argument on that issue and a second phase jury instruction
21 would be given to the jury on the issue. The jury would then
22 deliberate on the issue and fill in a punitive damages verdict form.

23 5. The judge will ask all voir dire questions. If a party
24 desires a question asked during voir dire, that party shall
25 communicate the request to the judge in writing. During voir dire the
26 judge will ask, "Does a party have additional further input?" If the
27 answer is "yes," the Courtroom Deputy will obtain from the answering
28 party that party's written question or questions,

1 6. As discussed at the trial confirmation hearing,
2 Plaintiff will appear at trial with leg restraints under his clothing.

3 7. A jury of eight will be selected by the method explained
4 at the trial confirmation hearing.

5 8. In the first phase of trial, each side's opening
6 statement may not exceed 15 minutes; each side's closing argument may
7 not exceed 20 minutes. Should there be a second phase, each side's
8 opening statements and closing arguments may not exceed 10 minutes.

9 9. The attached "Query" documents and "Strike Sheet" will be
10 used during jury selection.

11 10. The parties shall exchange all trial exhibits not later
12 than February 3, 2006. Defendant shall advise the court in writing
13 not later than January 27, 2006 if defense counsel has been unable to
14 resolve issues related to plaintiff's access to his legal materials.

15 IT IS SO ORDERED.

16
17 Dated: January 20, 2006

18 /s/ Garland E. Burrell, Jr.
19 GARLAND E. BURRELL, JR.
20 United States District Judge
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Query re Excuse Potential Juror

Do you Agree that Juror No. _____ should be excused for the reason stated by the juror or for any other reason? (Check applicable box below)

Plaintiff
Donnie Phillips

Defendant's
Attorney

RESPONSE:

☐☐

Yes

No

☐☐

Yes

No

Whether Jurors Present During Exercise of Peremptory Challenges

Can the jury be excused for the amount of time it will take to exercise peremptory challenges? (Set forth response in box below)

	Plaintiff Donnie Phillips	Defendant's Attorney
RESPONSE:	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
	Yes No	Yes No

How long do you estimate it will take you to exercise peremptory challenges? (Set forth minutes in box below)

	Plaintiff Donnie Phillips	Defendant's Attorney
MINUTES:	<input type="text"/>	<input type="text"/>

STRIKE SHEET

Plaintiff 1_____

 2_____

 3_____

Defendant 1_____

 2_____

 3_____